

### **REMARKS**

The present Amendment is submitted in response to the Office Action mailed November 27, 2007.

Claims 5 and 24 stand rejected on the ground of nonstatutory obviousness-type double patenting and claims 5, 7, 9, 10, 22 and 24-30 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting. Applicants will file a Terminal Disclaimer(s) as appropriate and upon the otherwise indication of allowability of the claims.

Claims 5, 7, 9, 10, 22, 24-30 stand rejected under 35 U.S.C. § 102(b) by Stablein (DE 37 37 121 A1). Stablein is directed to a controllable sealing system for a catheter. The system includes a controllable sleeve 1 which is inflatable upon introduction of gases or liquids 2. In use, "when the inner sealing system is closed, sensitive catheters can be guided, using a thin-walled tube to hold the sealing membrane open, through the external sealing system". (pg. 1, col 2, fifth pp of Stablein).

It is respectfully submitted that the present invention is patentable over Stablein. For example, Stablein fails to teach or suggest the recited "seal comprising a fabric material and being disposed within the access member, the seal having inner portions defining an aperture extending therethrough adapted to expand from a first open condition in a relaxed state of the seal to an expanded second open condition in a stressed state of the seal upon passage of the object in substantial sealed relation therewith". The relaxed state of the seal is depicted in Figures 14 and 15 of Applicant's specification, and corresponds to the condition of the seal in the absence of any externally applied stress. In the relaxed state, the seal defines an aperture which is open, i.e., in a first open condition. This "open" feature of the seal facilitates passage and removal of the surgical instrument through and from the cannula. As appreciated, relative ease

of passage of the instrument through a cannula, particularly, the seal, is desirable in endoscopic or laparoscopic surgical applications. Upon passage or reception of the object, the seal assumes a “stressed state” with a corresponding expanded second open condition of the aperture to form a seal about the object.

In contrast, as discussed hereinabove, with Stablein, the sleeve 1 is completely open when in its relaxed state as depicted in Figure 1A of Stablein. Upon the introduction of fluids within the sleeve 1, the sleeve 1 is stressed and assumes a closed position as depicted in Figure 1B of Stablein. Thus, in the relaxed state of the sleeve 1 of Stablein, the sleeve 1 defines an opening with a maximum inner dimension or diameter. Once the sleeve 1 is stressed (i.e., during introduction of fluids within the sleeve 1), the opening closes or assumes a minimum inner diameter not an “expanded second open position” as required by claim 5.

In addition, independent claim 5 also requires a “seal having a general tapered portion in the relaxed state thereof”. In contrast, the sleeve 1 of Stablein is not “tapered” when in the relaxed state of Figure 1A.

With regard to independent claim 24, Stablein fails to disclose the recited “seal comprising a fabric material and being disposed relative to the access member, the seal including a general tapered portion and having inner portions defining an open passage in a relaxed state of the seal adapted to permit passage of the object and to expand when in a stressed state of the seal in the presence of the object to form a substantial sealed relation with the object”. As indicated hereinabove, the sleeve 1 of Stablein is open defining a maximum inner dimension when in its relaxed state as depicted in Figure 1A and assumes a closed position when stressed as depicted in Figure 1B. In addition, the sleeve 1 of Stablein is not “tapered” when in the relaxed state of Figure 1A.

Accordingly, in view of the foregoing, withdrawal of this rejection is respectfully requested.

Claims 5, 7, 9, 10, 22, 24-30 stand rejected under 35 U.S.C. § 103(a) over Williamson, IV (U.S. 5,545,179) in view of Bailey (U.S. 4,157,057).

Bailey is directed to a pump for a petroleum well, and clearly is non analogous art and is improperly combined with Williamson, IV.

Williamson, IV is directed to an inflatable endoscopic access device incorporating an elastomeric sealing element 26 having an inflatable sleeve 35. A "conduit is connected to a supply (not shown) of an inflation fluid, such as air, to pump the inflation fluid from its source into the inflation space between the central inner channel and the outer inflatable sleeve (see the directions of the arrows in FIG. 6). Upon inflation of this space, the distal balloon portion of the elastomeric sealing element is inflated, and the inner central channel is compressed to seal the inner channel and the passage it defines". (5: 1-8 of Williamson, IV). FIG. 9 of Williamson, IV depicts the sealing element 26 in its deflated or relaxed state for passage through a body wall.

Even assuming the combination of the Bailey with Williamson, IV is proper, the combination still fails to disclose the recited "seal comprising a fabric material and being disposed within the access member, the seal having inner portions defining an aperture extending therethrough adapted to expand from a first open condition in a relaxed state of the seal to an expanded second open condition in a stressed state of the seal upon passage of the object in substantial sealed relation therewith" as required by independent claim 5 or the recited "seal comprising a fabric material and being disposed relative to the access member, the seal including a general tapered portion and having inner portions defining an open passage in a relaxed state of the seal adapted to permit passage of the object and to expand when in a stressed state of the seal

in the presence of the object to form a substantial sealed relation with the object” as required by independent claim 24. With Williamson, IV, the sealing element 26 with the inflatable sleeve 35 is open to a maximum dimension in the relaxed condition of Figure 9 and closes when stressed, i.e., during the introduction of inflation fluids within the inflatable sleeve 35. As discussed hereinabove, in the relaxed state of the recited seal, the seal defines an open aperture. The open aperture is expanded when stressed, i.e., when the object is introduced within the seal-in contrast to the sealing element 26 of Williamson, IV, which defines an internal channel having a maximum internal dimension when in its relaxed state and a minimum internal dimension when stressed. With further regard to independent claims 5 and 24, the combination fails to teach or suggest the recited “seal having a general tapered portion in the relaxed state thereof” as required by independent claim 5 or the recited “the seal including a general tapered portion” as required by independent claim 24. In contrast, as indicated hereinabove, with Williamson, IV, the sealing element is non tapered when in its relaxed state, e.g., when deflated as depicted in Figure 9 of Williamson.

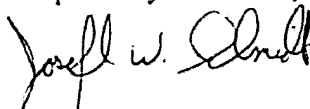
Accordingly, in view of the foregoing, withdrawal of this rejection is respectfully requested.

Each of the pending claims is believed to be allowable over the art of record. Allowance of the claims is earnestly solicited. Should the Examiner believes that a telephone or a personal interview may facilitate resolution of any remaining matters, he/she is respectfully requested to contact Applicant’s undersigned representative at the number indicated below.

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Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph W. Schmidt". The signature is fluid and cursive, with the first name "Joseph" and last name "Schmidt" being clearly legible.

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